

Remarks

Currently Claims 3, 14, 17, 19 – 21, 23, 25 – 30, and 43 -44 are pending. Claim 20 is amended herein to remove four compounds. Inasmuch as the instant response places the case in condition for allowance, it is respectfully submitted that entry of the amendment is proper under 37 CFR 1.116 and is respectfully requested.

In view of the amendment to claim 20 the objection to the claim is now moot.

Claims 1-3, 7, 14, 18-21, 23, 43 and 44 currently stand rejected. In view of the amendment to the claims this rejection is moot.

Claims 1-3, 7, 14, 18-21, 23, 43 and 44 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 11, 13, 14 and 40 of co-pending Application Serial No. 11/467,577. It is emphasized that this rejection is provisional.


Applicants respectfully submit that the claims of the two applications do not provide basis for an obviousness-type double patenting rejection. Regardless, it is not proper for the Examiner to refuse to allow the instantly pending claims in this case given that the co-pending application is a pending application and not a granted patent. Moreover, the co-pending application was filed 6 September 2005 more than 3 years AFTER the instant application, filed 8 August 2002. Should the Examiner in Application Serial No. 11/467,577 believe there is basis for an obviousness-type double patenting rejection, the Examiner in that case may make such a rejection and Applicants will respond appropriately. The instant application cannot in fact extend an improper timewise extension of patent term because it will expire before the application over which it is rejected.

There being no further rejections in this case, allowance of the instantly pending claims is required and is respectfully requested. In the event that the Examiner does not withdraw the finality of the rejection, Applicants respectful request a Notice of Allowance or Advisory Action prior to the 3 month date for filing the Notice of Appeal, i.e., 30 Oct 2008. The Examiner is invited to contact the undersigned at (919) 483-1577, to discuss this case, if desired.

Respectfully submitted,

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